

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

W/affidavit

76-6053
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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6033

JAMES H. CROUCH,

Plaintiff-Appellant,

—v.—

**UNITED STATES OF AMERICA
and CASPAR W. WEINBERGER,**
Secretary of Health, Education and Welfare,
Defendant-Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRIEF FOR DEFENDANT-APPELLEE

ROBERT B. FISKE, JR.,
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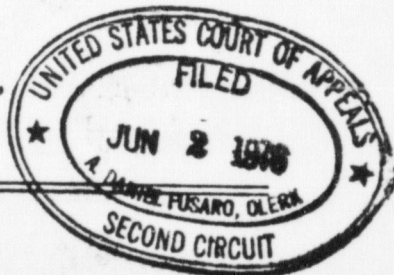


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BRIEF FOR DEFENDANT-APPELLEE

Statement of the Case

The Plaintiff-Appellant *pro se* James H. Crouch ("Mr. Crouch") appeals from a post-judgment Endorsed Order entered in the United States District Court for the Southern District of New York on February 18, 1976 by the Hon. Lee P. Gagliardi denying Mr. Crouch's motion for the payment to him by Defendant-Appellee Caspar Weinberger ("Secretary") of disability benefits for the duration of the statutory waiting period imposed by Section 223 of the Social Security Act, 42 U.S.C. § 423.*

* In his brief, Mr. Crouch has also raised the issue of another post-judgment Order entered on June 19, 1975 denying Mr. Crouch's motion for the payment to him of benefits which he claims for his son, James Crouch, Jr. and raised issues concerning the final judgment in this action entered in the United States District Court for the Southern District of New York on November 11, 1974 by the Hon. Harold R. Tyler, Jr. As the Notice of Appeal was not filed until March 12, 1976, these issues are not now before this Court.

Mr. Crouch brought an action for review of the final determination of the Secretary made on April 20, 1973, that Mr. Crouch was not entitled to benefits for mental disability from February 28, 1966 to September 30, 1971. Mr. Crouch filed his complaint pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) on June 26, 1973. The Secretary timely answered, filing with his answer a certified copy of the transcript of the administrative proceedings below, and moved for judgment on the pleadings affirming the decision below.

The District Court, by Memorandum Opinion of the Hon. Harold R. Tyler, Jr. entered July 22, 1974, and by judgment entered November 11, 1974, denied in part and granted in part the motion of the Secretary. Judge Tyler determined that Mr. Crouch had indeed been disabled from February 28, 1966 to September of 1969 but affirmed the Secretary's determination insofar as it held Mr. Crouch not disabled from October 1, 1969 to September 30, 1971. The District Court concluded that the decision of the Secretary regarding the period between October 1969 and September 1971 was supported by substantial evidence but that the decision regarding the period between February 1966 and September 1969 was not. Accordingly, Judgment was entered on November 11, 1974 requiring the Secretary to pay Mr. Crouch statutory benefits for a period of disability from February 1966 to September 1969. Mr. Crouch did not appeal this Judgment.

By Notice of Motion filed May 19, 1975, Mr. Crouch moved for an Order directing the Secretary to pay to Mr. Crouch disability benefits for the period of February 1966 to September 1966. By the same motion he also sought an Order directing the Secretary to pay to Mr. Crouch benefits which he claims for his son, James Crouch, Jr. The Secretary opposed the latter motion on the ground

that the District Court lacked jurisdiction over the subject matter of Mr. Crouch's claim on behalf of his son, both because of Mr. Crouch's failure to exhaust his administrative remedies and his failure to raise the claim for his son in the complaint.

The District Court by Order entered October 22, 1975, pursuant to the Endorsed Opinion of the Hon. Lee P. Gagliardi, entered on June 19, 1975, denied the motion regarding payments for Mr. Crouch's son. Mr. Crouch did not appeal from this Order.

By Notice of Motion served December 15, 1975, Mr. Crouch renewed his motion for an Order directing the Secretary to pay to Mr. Crouch disability benefits for the seven month period from February 1966 to September 1966. The Secretary opposed the motion, maintaining that Mr. Crouch was not entitled to disability benefits during the statutory waiting period, according to Section 223 of the Social Security Act, 42 U.S.C. § 423.

The District Court, by endorsed Order of the Hon. Lee P. Gagliardi entered February 18, 1976, denied Mr. Crouch's motion for an Order directing payments for the duration of the waiting period.

By Notice of Appeal filed March 12, 1976, Mr. Crouch appealed from this determination.

Applicable Statute

Section 223 of the Social Security Act, 42 U.S.C. § 423, reads in pertinent part:

§ 423 Disability insurance benefits.

(a) Disability insurance benefits.

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c) (1) of this section),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c) (2) of this section) in which he becomes so entitled to such insurance benefits. . . .

* * * * *

(c) Definitions; insured status; waiting period:

* * * * *

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, *the earliest period of six consecutive calendar months—*

(A) throughout which the individual who files such application has been under a disability and

(B) (i) which begins not earlier than with the first day of the eighteenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such eighteenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such eighteenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957 (emphasis supplied).

Issue Presented

1. Did the District Court (per Gagliardi, J.) properly deny Mr. Crouch's motion for an Order directing the Secretary to pay disability benefits for the duration of the statutory waiting period from February 28, 1966 to August 30, 1966, which waiting period is imposed by Section 223 of the Social Security Act, 42 U.S.C. § 423.

Statement of Facts

Mr. Crouch's application for disability benefits, which commenced the administrative proceedings below, requested disability benefits commencing February 28, 1966. (T. 132).*

The District Court ruled that Mr. Crouch was indeed disabled from February 1966 through September of 1969 and was entitled to appropriate benefits for that period of disability.**

* Reference "T" is to the certified transcript of the administrative record filed with and made part of the Secretary's Answer in the District Court.

** The opinion of the Hon. Harold R. Tyler is included in Mr. Crouch's Appendix, the pages of which are not numbered.

The applicable provision of the Social Security Act, 42 U.S.C. § 443(a) and (c) (2), provides for a six month waiting period after the onset of the disability before benefits commence. Accordingly, the Social Security Administration informed Mr. Crouch that he would receive benefits from six months after February 28, 1966, i.e. September of 1966, through two months after the end of the disability period, i.e. November 1969.*

On a date which does not appear in the record, Mr. Crouch apparently applied to the Social Security Administration for benefit payments by reason of his support of his son during the period of his disability. No final determination has yet been made by the Secretary on this claim.**

ARGUMENT

POINT I

The District Court properly denied Mr. Crouch's post-judgment motion for disability payments during the statutory waiting period.

The Opinion pursuant to which judgment was entered in this action stated, "... I conclude that plaintiff's disability falls within coverage of the Act for the period of February, 1966 through September 30, 1969." (Opinion of Hon. Harold Tyler entered July 22, 1974, p. 17).

Pursuant to section 223(a) and (c) (2) of the Social Security Act, 42 U.S.C. § 423(c) (2), disability payments commence six months after the onset of the disability. Thus, Judge Tyler's ruling that plaintiff had a disability

* Social Security Award Certificate dated January 29, 1975, included in Mr. Crouch's Appendix.

** *Id.*

within the coverage of the Act commencing February of 1966 requires that plaintiff receive statutory benefits commencing six months later. As Mr. Crouch's application had claimed a disability commencing February 28, 1966, the six month period was measured from that date. Benefits were therefore paid for a period from September of 1966 up to but not including November of 1969. Mr. Crouch has received precisely what he was entitled to under the judgment and the applicable law.

CONCLUSION

The order of the District Court should be affirmed.

Respectfully submitted,

June 2, 1976

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AFFIDAVIT OF MAILING

CA 76-6033

State of New York)
County of New York) ss

Pauline P. Troia being duly sworn,
deposes and says that she is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
2nd day of June, 19 76 she served ² a copy of the
within govt's brief

by placing the same in a properly postpaid franked envelope addressed:

James H. Crouch,
160 West 97th St.
NY NY

And deponent further says she sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

2nd day of June, 19 76

Lawrence Mason
 LAWRENCE MASON
 Notary Public, State of New York
 No. 03-2572500
 Qualified in Bronx County
 Commission Expires March 30, 1977